

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-619

COMMONWEALTH

vs.

JOSEPH A. MACDONALD.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant, Joseph MacDonald, was convicted of failing to register as a sex offender, a violation of G. L. c. 6, § 178H (a) (1), following a jury-waived trial in the District Court. On appeal, he makes two claims regarding the sufficiency of the evidence: first, that the Commonwealth failed to identify him as the person who was convicted of the predicate sex offense, and second, that the Commonwealth failed to prove he knowingly failed to register as a sex offender. He additionally asserts ambiguity in the "annual" registration requirement of G. L. c. 6, § 178F½. We affirm.

Discussion. 1. Identification. The defendant contends that the Commonwealth failed to prove in its case-in-chief that he was the same Joseph A. MacDonald named in the 1996 sex offense conviction that gave rise to an obligation to register

as a sex offender.<sup>1</sup> While "identity of name is not sufficient to indicate an identity of person," Commonwealth v. Koney, 421 Mass. 295, 302 (1995), "[c]ircumstantial evidence may be sufficient to prove matters in dispute, including the existence of prior offenses." Commonwealth v. Bowden, 447 Mass. 593, 601 (2006). See Commonwealth v. Jewett, 471 Mass. 624, 636-637 (2015), citing Koney, supra. "[P]roof is sufficient if 'there was enough evidence that could have satisfied a rational trier of fact of each . . . element [of the crime] beyond a reasonable doubt.'" Bowden, supra, quoting Commonwealth v. Latimore, 378 Mass. 671, 677-678 (1979).

Here, along with the certified prior conviction of aggravated rape on May 30, 1996, that displayed the defendant's name, the Commonwealth entered in evidence records from the Sex Offender Registry Board (SORB) that included the defendant's name, photograph, biographical information, and May 30, 1996 conviction of aggravated rape. The Commonwealth also entered in evidence records from the Lowell Police Department that included the defendant's name, photograph, biographical information, and May 30, 1996 conviction of aggravated rape. These records relating to the defendant's prior conviction and consequent

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<sup>1</sup> Following the close of the Commonwealth's case-in-chief, the defendant testified and identified himself as the same Joseph A. MacDonald that was convicted of aggravated rape on May 30, 1996.

obligation to register as a sex offender were entered in evidence without objection. The photographs and biographical information of the defendant from SORB and the Lowell Police Department, together with evidence of the defendant's prior conviction provide a sufficient inferential link between the defendant and the 1996 conviction. See Bowden, 447 Mass. at 602 (correlation in certified prior convictions displaying defendant's name and biographical information with Registry of Motor Vehicles records that included a photograph, deemed sufficient to link the defendant to three prior convictions).<sup>2</sup>

2. Knowledge of registration requirements. The defendant contends that the Commonwealth failed to present sufficient evidence that he knowingly failed to register as a sex offender. Specifically, he claims that a mistaken belief that his duty to register had ended, along with evidence that he experienced psychiatric symptoms of schizophrenia and posttraumatic stress disorder, vitiated actual knowledge of his registration requirements.

In order to prove that a defendant knowingly failed to register, the Commonwealth must "prove that the defendant knew

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<sup>2</sup> This case is therefore distinguishable from Koney, where court documents indicating that a person named Roger A. Koney had been convicted on three prior occasions were, standing alone, insufficient to prove that the defendant was the same person named in the three prior convictions. 421 Mass. at 301-302. See Commonwealth v. Jewett, 471 Mass. at 636-637.

of the requirement that he register but did not do so despite this knowledge." Commonwealth v. Ramirez, 69 Mass. App. Ct. 9, 12 (2007). The Commonwealth's "proof [of the defendant's knowledge] must be specific to [the] defendant . . . [and not] the general population or some subset thereof." Id.

In this case, unlike Ramirez, there was evidence that the defendant had received, understood, and acted upon notice of his registration obligations between his release from prison in 2006 and arrest for this charge in 2016. The defendant presented several reasons for mistakenly believing that he had been relieved of his obligation to register. First, he claimed he did not read the registration documents he signed that set forth his registration obligations. Second, he heard "on the street" that "after twenty years you could stop" registering. Third, he experienced symptoms of mental illness.<sup>3</sup> "The judge, as trier of fact, was entitled to reject part or all of the defendant's testimony." Commonwealth v. Coffman, 84 Mass. App. Ct. 33, 38 (2013). The defendant's mistaken belief that he was exempt from the registration requirement does not render his failure to register not knowing as a matter of law. See Commonwealth v. Becker, 71 Mass. App. Ct. 81, 89 (2008) ("The defendant's interpretation of the law does not control whether he had to

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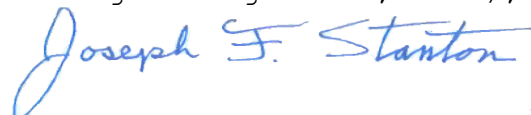
<sup>3</sup> The defendant did not pursue a criminal responsibility defense.

register"). There was sufficient evidence, specific to the defendant, of his knowledge of the registration requirements with which he did not comply. Commonwealth v. Scipione, 69 Mass. App. Ct. 906, 907 (2007). Contrast Ramirez, 69 Mass. App. Ct. at 12.

3. Annual registration. The defendant contends for the first time on appeal that the Commonwealth's evidence was insufficient to prove that he failed to register "annually" as required by G. L. c. 6, § 178F½, because the statute does not specify whether the term "annually" refers to once every calendar year or once every 365 days. This was not a live issue at trial where the defendant claimed he had no knowledge of his obligation to register on any future date. The judge is presumed to have instructed herself correctly on the law. See Dutil, petitioner, 437 Mass. 9, 16 (2002). The evidence was sufficient to support a guilty finding on the grounds argued by the Commonwealth, namely that he failed to register after moving. See G. L. c. 6, § 178F½.

Judgment affirmed.

By the Court (Sullivan,  
Singh & Englander, JJ.<sup>4</sup>),



Clerk

Entered: June 27, 2019.

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<sup>4</sup> The panelists are listed in order of seniority.